Oxnard, CA
Fillmore, CA

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COASTAL GROWERS ASSOCIATION, S & F GROWERS, Employers, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case Nos. 78-UC-1-OX 79-UC-1-OX 7 ALRB NO. 9

DECISION AND ORDER

CLARIFYING BARGAINING UNIT

Pursuant to Petitions for Clarification of Bargaining Unit filed by the United Farm Workers of America, AFL-CIO (UFW), in order to resolve questions of unit composition allegedly left unresolved at the time of certification in each of the above-captioned cases, the Regional Director of the Oxnard Region of the Agricultural Labor Relations Board issued a report in which he recommended that the petitions be granted. 8 Cal. Admin. Code section 20385. Thereafter, exceptions to the Regional Director's report and recommendation were timely filed by Coastal Growers Association (Coastal) and S & F Growers, (S & F), cooperative harvesting associations, and by certain of their former grower-members.

On June 13, 1979, the Board consolidated the cases because of the similarity of the issues involved and set the matter for a full evidentiary hearing before Investigative Hearing Examiner (IHE) Robert LeProhn. On April 18, 1980, the IHE issued the attached decision

in which he recommended that the petitions be dismissed. The UFW timely filed exceptions with a supporting brief, and each employer filed a brief in response to the UFW's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the IHE, and to adopt his recommended Order.[1/]

Coastal Growers Association and S & F Growers were organized in 1961 and 1965, respectively, under California Agricultural Code section 54001, et seq., for the sole purpose of providing agricultural workers to harvest the citrus crops of their grower-members.[2/]

Following a representation election, this Board certified the UFW as the exclusive collective-bargaining representative of all agricultural employees of S & F on April 2, 1977, and certified the UFW as representative of Coastal's agricultural employees on

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[1/] As we shall dismiss the petitions filed herein, we find it unnecessary to reach the question whether modification of the existing certifications to include former members as employers would infringe upon the due-process rights of such members because they were not individually given prior notice of the election proceedings involving either association.

[2/] The associations are independent entities but they have virtually identical organizational structure and business operations. Accordingly, each recruits and hires and thereafter houses, feeds, transports, pays, and supervises a harvest workforce under the day-to-day direction of a permanent general manager hired by and responsible to a board of directors. Association services are not available to non-members. Membership is contingent, upon formal application and subsequent approval of the directors and is non-transferable. Members are contractually bound to pay their association for their direct harvest costs, to share in the underwriting of the association's actual costs of operation, and to contribute to the purchase or lease of association assets such as trucks, buses, other equipment and real property necessary to administration. Neither association is. involved in the loading, hauling, or marketing of citrus.

April 5, 1978. Coastal entered into a collective-bargaining agreement with the UFW on May 8, 1978, and on the following November 1 advised the union that certain of its grower-members had cancelled their memberships.[3/] S & F entered into an agreement with the UFW on June 1, 1979 and on December 5, of that year notified the union that some of its grower-members had since withdrawn from that association.

It was these withdrawals which prompted the UFW to seek inclusion of the harvest employees of former grower-members within the original bargaining unit. The UFW contends that association members may not repudiate the bargaining agreement, insofar as it affects them, at any time by simply cancelling their memberships. Otherwise, former members could thereafter seek harvest labor from some non-union, and thus less costly, source, thereby diminishing the associations' workforce requirements. The UFW asserts that without independent ongoing farming operations of their own, the associations are merely service organizations and as such cannot offer stability in labor relations.

We are not unmindful of the arguments advanced by the UFW,[4/] but it is our view that they are grounded on hypothetical

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[3/] The IHE found that Coastal normally experiences a yearly fluctuation in membership. A Coastal spokesman testified that his association had gained more new members than it lost in the 18-month period between certification and hearing. Various reasons were cited by the IHE for membership turnover; all were based on changed circumstances, including conversion of the former lemon-producing land to real estate development, replacement of older groves with new trees or row-crop plantings, and new harvesting arrangements necessitated by a grower's affiliation with a different marketing outlet.

[4/] The UFW's concerns are reflected in Member Ruiz's dissenting opinion. We do not undertake any assessment of whether the speculations or probabilities set forth therein might actually become accomplished fact.

possibilities and thus do not provide a proper basis for decision. We rely instead on evidence in the record, including the demonstrated history, purpose, and function of these associations as of the time of the hearing in this proceeding, to find that they have provided the requisite stability in labor relations which the Act contemplates. We conclude therefore that each association was properly found to be the sole employer of its harvest employees, and that it would be improper to include in the certified bargaining units employees who are no longer employed by the associations.

ORDER

It is hereby ordered that the Petitions to Clarify Bargaining Units in this matter be, and they hereby are, dismissed.

Dated: April 8, 1981

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

MEMBER RUIZ, Dissenting:

I dissent.

The majority concludes that Coastal Growers Association and S & F Growers, as entities separate from their grower members, are the agricultural employers of the lemon harvest employees. After examining the nature of the citrus industry and in particular the relationships between the two associations, their members, and the packing houses with whom they do business, I conclude that the associations by themselves cannot provide the degree of stability in collective bargaining required of agricultural employers under the Act.

The IHE confined his analysis to a determination of whether the associations and their members fit various models of employing entities—the multi-employer unit, the joint employer, and the single employer models. Focusing on the relationship between association and each member, and finding no direct grower control over the harvest employees, the IHE determined that there

was no similarity of operations, interchange of employees, common labor relations policy, or common management. This analysis begs the question: the grower members in this case expressly delegated the authority to control the workers' employment conditions to the associations. The grower members, by forming these associations to provide labor, automatically have a common labor relations policy, common management and an interchange of employees.

In determining who is a suitable employer, the ALRB looks to that entity which can provide the most stability in a collective bargaining relationship. The entity which has a permanent and substantial interest in the agricultural operations is a proper entity to negotiate terms and conditions of employment with agricultural workers. Gourmet Harvesting and Packing (Mar. 29, 1978} 4 ALRB No. 14; Joe Maggio, Inc. (Apr. 10, 1979) 5 ALRB No. 2c A scrutiny of the total activity of the entity is necessary to decide whether it should assume the bargaining responsibilities. Napa Valley Vineyards Co. (Mar. 7, 1977) 3 ALRB No. 22. Therefore, the Board must examine whether Coastal Growers and S & F Growers, as entities separate from their members, can provide the requisite stability and whether they possess a permanent interest in the agricultural operations. The analysis must take into account the realities of the employing industry and the function of the harvesting associations.

The citrus industry is unique in agriculture. Because the fruit may be left on the trees' for months without damage, the harvest may be manipulated by the demands of the market. Therefore, it is the citrus packing houses receiving the market

orders, rather than the grower or harvesting associations, who supervise the harvest to meet those orders and who control the quantity and quality of the fruit. Lemon orchards range in size from properties of a few acres to properties with hundreds of acres. While certain lemon growers are directly involved in the agricultural operations, many lemon growers are absentee landowners who delegate cultivation operations to land management groups and harvest operations to harvesting associations.

The record in this case shows that, due to both their structure and their function, Coastal Growers and S & F Growers, as separate entities, provide little stability for serious collective bargaining. Both associations are cooperative lemon harvesting associations made up of grower members. The associations harvest only for their members and make no profit from their services. Therefore, if the members withdraw, the association as an entity ceases to exist. This is unlike a commercial business, such as a commercial custom harvester, or any other provider of service, which, although it may lose customers if labor costs are increased due to unionization, does not structurally cease to exist.

It is possible that a nonprofit cooperative association could, apart from its grower members, provide stability in employment and could have such a permanent interest in an agricultural operation so as to warrant certifying it as an agricultural employer. See Corona College Heights Orange and Lemon Association (Feb. 28, 1979) 5 ALRB No. 15. Indeed, the ALRA definition of "agricultural employer" includes "any individual grower, corporate grower, cooperative grower, harvesting

association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture." Section 1140.4 (c), emphasis added. However, the mere fact that an entity is deemed a harvesting association does not automatically mean that that entity by itself is an appropriate employer.

In this case, the function of both S & F Growers and Coastal Growers render them unstable employers. The sole purpose of these two associations is to provide labor for the harvest. An examination of their operations and their relationship with the citrus packing houses reveal that the associations function, in effect, as labor contractors rather than as custom harvesters.

S & F and Coastal hire and fire their harvest workers and are directly responsible for paying them wages and fringe benefits. Crew foremen employed by the associations supervise the workers in the fields and the associations provide the minimal amount of equipment necessary for the harvest. However, all managerial judgment as to the harvest activities is exercised by the packing houses. The packing houses give daily directions to the harvesting association on where to pick, when to pick, and how much to pick. Packing house employees check for quality control of the lemons in the fields. The packing houses own the fruit bins and transport the lemons from the fields to the packing houses. The harvesting associations thus have no responsibility except for picking and placing the fruit in the bins; they exercise virtually no

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managerial judgment.[1/] In sum, although they have direct control over the work force, the associations exercise little independent judgment and they do not provide specialized equipment. They therefore cannot be characterized as custom harvesters. Sutti Farms (Feb. 19, 1980) 6 ALRB No. 11.

Since the associations function only to provide labor, it is apparent that they by themselves have no substantial or permanent interest in the agricultural operations. The source from which they derive such an interest is their grower members, who own the lemon orchards and who have an interest in the quality of the harvesting and packing of their lemons. Section 1140.4 (c) provides that the employer engaging a person who supplies agricultural workers is the employer of those workers, in order to fix the bargaining obligation on an entity with a substantial interest in the agricultural operation. In this case, because the associations are the functional equivalent of a labor contractor, its grower members must be under a bargaining obligation to provide the needed stability in a collective bargaining relationship.

The advent of unionization generally causes, as it did in this case, an increase in labor costs. The Board, of course, cannot bind arm's-length customers to use a certain service once

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[1/] In fact, under some circumstances, the packing houses may be the logical employer entities, since they supervise the harvest operation and control the quality of the fruit. See Rivcom Corp., et al. (Aug. 17, 1979) 5 ALRB No. 55, where the Board found that the packing house operation, rather than the entity supplying the labor, was the employer of the harvest employees; Corona College Heights Orange and Lemon Association (Feb. 28, 1979} 5 ALRB No. 15, where the Board certified the citrus packing house association as the employer of the harvest employess; Gourmet Harvesting and Packing (Mar. 29, 1978) 4 ALRB No. 14.

costs are increased. However, I find that the grower members are not arm's-length customers of the association, since the members actually constitute the association and since section 1140.4 (c) deems the members to be the employers of the associations who act as suppliers of labor.

Furthermore, although some job loss is often the result of unionization when the unionized employer loses customers due to increased service costs, the Act contemplates certifying employers who will be able to continue to function after unionization. A failure to bind the grower members has more impact in terms of job loss on the associations than that generally contemplated by the statute. Because these associations, unlike-commercial operations, are nonprofit organizations, the increased labor costs cannot be absorbed in the operation but rather are directly transmitted in increased labor costs to the grower members. Since the only reason for members' to remain with the association is to have a ready supply of labor, members will tend to withdraw simply because the only service being provided has become more expensive. This is contrary to the statutory scheme of certification. On the one hand, if a grower uses workers hired by a labor contractor, the statute requires that the grower be certified, thus requiring the grower to absorb the increased labor costs arising out of unionization. On the other hand, the statute establishes that, to be a certifiable agricultural employer, the entity, such as a custom harvester, must, by definition, provide more than labor; for instance, they must provide specialized equipment or supervise the harvest. Therefore, by hiring a custom harvester, the grower is

buying more than just labor. The grower is buying a service and thus would have reason to continue using the service, even if labor costs were increased. Thus, the certified custom harvester may experience a manageable amount of job loss.

The ultimate consequence of failing to bind the grower members to the associations or to a bargaining obligation is that the associations will, by losing their membership, cease to exist and the union will have no entity with which to bargain. However, even if the members do not withdraw, a failure to impose a bargaining obligation on the members allows the members to circumvent the union and the collective bargaining agreement, not by withdrawing, but simply by not using association labor. The record, in fact, shows that certain members who remained in the. associations actually used harvest employees from other sources. A collective bargaining agreement negotiated between the association and the union would have little force if the members themselves could choose not to use the association's harvest employees or abide by the agreement. A bargaining obligation imposed on the members would allow such issues as the use of outside harvest labor to become subjects of serious collective bargaining.

I find that it is necessary to impose a bargaining obligation on the grower members, if the Board wishes to certify entities which provide some degree of stability in a bargaining relationship. However, I also recognize that these associations perform a useful function in the citrus industry and also can provide more stable year-round employment to citrus workers than can individual growers. These associations, which possess

authority over labor relations delegated by their grower members, are logical entities for collective bargaining purposes. Members may have certain legitimate reasons for wishing to withdraw from the association. Therefore, I do not advocate a complete prohibition on withdrawal from the associations during the certification of the union. I find that the most feasible and equitable approach to this unit clarification id in both cases to deem the association to be the agricultural employer with which the union may bargain. However, because the grower members constitute the association, they also incur an obligation to bargain with the union, while they are members of the association. This bargaining obligation imposes on the members the following duties: so long as they are members of the association, they must recognize the union and must abide by the contract negotiated by the association. If they wish to withdraw, they may withdraw after bargaining about the withdrawal with the union.[2/]

Since the employing entity is the association and since the member's bargaining obligation ends upon withdrawal, there is no conflict with the requirement of section 1156.2 that the bargaining unit shall be "all the agricultural employees of an employer." If a grower-member employs agricultural employees to perform cultivation or agricultural operations other than the harvesting of lemons, the member can be deemed the employer of those employees.

[2/] It must be emphasized, however, that the association, as an agricultural employer, remains bound by the certification until such time as the incumbent union is decertified or is replaced by a rival union.

This Board is charged with the responsibility of establishing stable bargaining relationships in the agricultural industry. Therefore, we must scrutinize and take into account the complexities of the employing industries in determining the proper employer entities for bargaining purposes. Harvesting associations, such as Coastal Growers' and S & F Growers, play & unique role in the citrus industry which is itself structured differently than most agricultural businesses which this Board has encountered. These associations do not fit easily into existing employer models. It does a disservice to the industry, the unions, and the employees to refuse to look beyond existing models for a solution to this unit problem. Given the structure of the industry and the role of harvesting associations, I conclude that to deem the associations the agricultural employers of the employees and to impose a limited bargaining obligation on the members of those associations would protect both the industry's interests and the employees' interests.[3/]

Dated: April 8, 1981

RONALD L. RUIZ, Member

[3/] I reject the IHE's conclusion, based on Alaska Roughnecks and Drillers Association v. NLRB (9th Cir. 1977) 555 F. 2d 732 [95 LRRM 2965], that the grower members were denied due process. Coastal Growers and S & F Growers were created by, and are made up of, their grower members. Unlike the two companies in Alaska Roughnecks, the members and the associations are not separate entities. The grower members belonged to the associations at the time of the election. The members had delegated control of labor relations to the associations; the associations were acting, in effect, as agents of the members at the time of the election.

[fn. 3 cont. on p. 14]

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[fn. 3 cont.]

Therefore the problem of election notice in Alaska Roughnecks does not exist here. Furthermore, the question of their duty to bargain did not arise until the members withdrew from the associations, when their intent to disregard the certification became apparent. Unlike Alaska Roughnecks, which involved an unfair labor practice proceeding, the unit clarification hearing in this case afforded the grower members the opportunity to litigate their employer status in a representation proceeding. I find no denial of due process.

CASE SUMMARY

Coastal Growers Association and
S & F Growers (UFW)

7 ALRB No. 9
Case Nos. 78-UC-l-OX
79-UC-l-OX

BACKGROUND

Following separate representation elections, the Board certified the United Farm Workers of America, AFL-CIO, (UFW) as exclusive collective bargaining representative of the agricultural employees of Coastal Growers Association and S & F Growers, both long-established cooperative harvesting associations, in two separate bargaining units. Thereafter, each of the two associations entered into a separate collective bargaining agreement with the UFW. Subsequent to the elections and/or certifications, various growers cancelled their memberships in one or the other of the associations. On the basis of Petitions for Clarification of Bargaining Units, the UFW requested that the Board "clarify" its previous certifications to add therein as employers the former grower-members of the respective associations. The UFW contended that each grower who was a member of either association at the time of the election or certification, and thereafter cancelled its membership, should nevertheless be bound by its association's bargaining agreement covering its current harvest employees. Because of the associations' virtually identical structure and method of operation, and the similarity of the _issues involved, the Board consolidated the cases and set the matter" for a full evidentiary hearing.

IHE DECISION

The IHE rejected the UFW's contention that growers who held active membership status in an association as of the time of the election or certification should be deemed to be, in conjunction with that association, either a single or joint employer, on the grounds that neither of the associations by itself can provide stable long-term employment to lemon harvesters. He recommended that the petitions be dismissed in their entirety.

BOARD DECISION

A two-member majority of the Board, Perry and McCarthy, affirmed the findings, rulings, and conclusions of the IHE on the basis of the demonstrated history, purpose, and function of the associations as of the time the record in this matter was compiled. They concluded that since the associations have provided the requisite stability in labor relations which the Act contemplates, each association was the sole employer of its harvest employees and that it. would be improper to include the employees of former grower-members in either of the certified bargaining units.

DISSENTING OPINION

Member Ruiz would grant the union's request for clarification in each case. He expressed the view that the nature of the citrus industry, particularly the relationships among the associations, their members, and the packing houses with which they do business, establishes that the associations by themselves cannot provide the degree of stability in collective bargaining required of agricultural employers under the Act. He would find, in each case, that while the association is the agricultural employer for purposes of collective bargaining, the grower-members, during the term of their membership, incur a bargaining obligation to the extent that they must recognize the certified union, and must abide by the contract negotiated by the association. Member Ruiz would not restrict a member's right to withdraw from its association providing such member bargains with the union over the effects of its withdrawal on unit employees.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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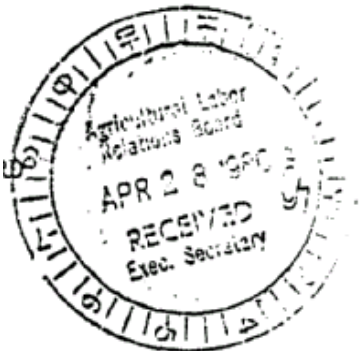
STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATION BOARD



COASTAL GROWERS ASSOCIATION Respondent and S & F GROWRES Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party	)	Case Nos. 78-UC-l-OX 79-UC-l-OX

APPEARANCES:

Keith A. Hunsaker, Jr.,
Esquire, Seyfarth, Shaw, Fairweather & Geraldson
2029 Century Park East, Suite 3300
Los Angeles, California 90067

and

Leon L. Gordon, Esquire,
Gordon & Glade
600 South Commonwealth Avenue
Los Angeles, California 90005

On Behalf of Respondents

Carmen Flores, Esquire,
P. 0. Box 104-9
Salinas, California 93902

On Behalf of Charging Party

DECISION

DISSENTING OPINION

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STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATION BOARD

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600 South Commonwealth Avenue
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On Behalf of Respondents

Carmen Flores, Esquire,
P. 0. Box 104-9
Salinas, California 93902

On Behalf of Charging Party

DECISION

STATEMENT OF THE CASE

Robert LeProhn, Administrative Law Officer: The captioned cases, having been consolidated for hearing, were heard before me on September 17, IS, 19, 20, 21, 24, 25 and 26, 1979, in Oxnard, California.[1/]

Following the filing of a Petition for Certification on March 29, 1978, and an election conducted pursuant thereto on April 5, 1978, the United Farm Workers of America (UFW) was certified as the collective bargaining representative for a unit of "All agricultural employees of Coastal Growers Association."[2/]

On April 20, 1977, pursuant to the normal representation procedures, the UFW was certified as the bargaining representative for a unit of "All agricultural employees of the employer (S & F Growers) in the State of Calif ornia."[3/]

On November 17, 1978, the UFW, pursuant to the provisions of 8 California Administrative Code Section 20385, filed a Petition to Clarify Bargaining Unit with respect to its CGA certification, seeking:

> (A) clarification of its unit by an order that declares these twenty-one (21) growers, along with CGA and other relevant entities, to be a single employer for purposes of collective bargaining under the ALRA, which, therefore, renders unlawful their refusal to abide by the contract between UFW and CGA.

A similar petition seeking the following order was filed on February 14, 1979, with respect to the S & F unit:

> (A)n order that declares all other grower members who have withdrawn since April 5, 1977, along with S & F and other relevant entities to be a single employer for purposes of collective bargaining under the ALRA, which therefore, renders unlawful their refusal to abide by the contract between the UFW and S & F, for the members of S & F, at the time of the representation election, must remain within the bargaining unit covered by the June 1978 bargaining agreement.

On February 1, 1979, the Regional Director for the Salinas Region issued his recommendation with respect to the UFW petition in Coastal Growers. It states:

> (H)ere we have several growers which, prior to the

1/The Regional Director did not have a representative present.

2/Hereafter CGA or Coastal.

3/Hereafter S & F.

> election had associated together to create a single employer. During their association an election was held and a certification issued, naming CGA as the employer. Inasmuch as CGA is but the total of its component grower-parts, the unit certified was the association as constituted at the time of the election. Where the association is certified as a single employer, the minimal acceptable unit is the unit as constituted at the time of the election. The withdrawing members which are the subject of this petition were part of the association at the time it was deemed to be a single employer by this Board. Therefore, the unit includes all such members of the association, whether or not they choose later to withdraw from the association.

On May 2, 1979, the Salinas Regional Director issued a similar recommendation with respect to the UFW's petition regarding its S & F certification.

Timely exceptions were filed in each case by the Association and by those growers named as having withdrawn from the Association subsequent to its certification.

On the basis of the evidence presented at the hearing and with consideration given to the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

A. Overview

The picture of the lemon citrus industry in Ventura County as revealed by the evidence presented in these consolidated cases is one in which the grower is seen as almost totally divorced from the entire process of growing, harvesting and marketing the crop.

He owns or leases land on which a lemon orchard rests. Customarily he contracts with a land management firm or with independent contractors to handle all the care and control of the orchard until time for harvest. He joins a harvest association or patronizes a commercial harvest organization for the harvest of his crop and contracts with a packing house for the packing and marketing of the crop.

As noted by one of the witnesses, the growth of specialized professionals in each of the above fields during the last 20 years has changed the character of the industry and permitted a high degree of absentee ownership. Growers have little or no direct day-to-day contact with the farming, harvesting or marketing of the fruit on their property. Day-to-day decisions regarding the orchard are made by the appropriate independent organization utilized by the grower.

The grower may decide which harvest organization or which packing shed he wishes to patronize, but even these decisions may only be acquiesence in a recommendation from the entity responsible for the

cultural practices involved in raising his lemons. It is against this backdrop that the UFW's petitions must be examined.

B. Coastal Growers Association

Coastal Growers Association is an agricultural cooperative established in 1961 pursuant to the provisions of Sections 54-001, et seq., of the Agricultural Code of California. It has 268 members and is engaged solely in the harvesting of lemons.4/ Pursuant to its by-laws, its services are available only to members.

Coastal maintains an office and camp facilities housing approximately 200 employees in Oxnard, California. Its operations are governed by a Board of Directors elected annually at a membership meeting held in January.5/ The Board in turn elects the Association's officers. The Board holds monthly meetings which are open to all members; however, members seldom attend. Coastal's collective bargaining agreement with the UFW was not submitted to its members for ratification. It was negotiated and entered into by the Board of Directors. Jack Lloyd, General Manager, testified that resignation is the only effective remedy available to a member dissatisfied with CGA's operations, asserting that members have no direct control over CGA.

The sole service which Coastal currently performs for its members is harvesting their lemon orchards. Prior to November 1, 1977, Coastal also harvested member-grown oranges.6/

There are four packing houses in Ventura County which currently market and pack lemons grown by CGA members, Oxnard Lemon Association, Seaboard Lemon Association, Ventura Coastal Corporation, and Ventura Pacific Company. At the time of certification Paramount Citrus Association, Inc., also packed fruit harvested by CGA. Oxnard, Seaboard and Ventura Pacific are cooperatives, Paramount and Ventura Coastal are "commercial" operations. Ventura Coastal grows lemons on its own acreage and it is a grower-member of CGA.

There is no contractual relationship between Coastal and any of the packing houses. Although Coastal's by-laws do not require its members to have their fruit packed by one of the named houses, it has had no members in recent years who did not do so.

4/In addition to Coastal and S & F, there are three lemon harvesting co-ops in Ventura County (P. & P., L. & 0., and Buena Foothill Growers Ass'n) as well as some "commercial" harvesters.

5/Coastal's by-laws do not require its directors to be members of the Association. Two current members are not growers. Each occupies a managerial position with a packing house. In each instance the packing house packs and markets lemons harvested by CGA.

6/The lemon season and the fiscal year of those engaged In lemon growing, harvesting or marketing operations in Ventura County runs from November 1 to October 31.

Coastal's day-to-day operations are under the direction of its General Manager, Jack Lloyd, who has occupied the position since 1962. Lloyd was hired by CGA's Board and is directly responsible to it. Lloyd in turn is responsible for the hiring and firing of Coastal's supervisory personnel. Directly responsible to Lloyd is Fermen Hildalgo, Field Operations Manager. Coastal's crew foremen are responsible to Hildalgo.

Crew foremen do not have authority to hire, hiring is done at the Coastal office. The crew foreman assigns the "set" each worker is to pick;7/ he tells the workers what kind of lemons to pick; he keeps the time for his crew members; he keeps count of the fruit picked; he sees that there is a supply of boxes available for the pickers; he adjudges when "wet time" ends; he sees that safety rules are observed; he sets up the stove and arranges for the lunch break; and he has authority to discipline workers short of discharge.8/

When Coastal dispatches a crew to an orchard, it is the only crew working that orchard. There is no interchange of harvest employees between Coastal and a grower or between Coastal and another harvest association. The grower exercises no control over the harvest crew.

There is great variation in the frequency with which growers visit their orchards during the course of a harvest. Those living on the property visit more frequently.

When problems arise regarding the workers' entitlement to specified contractual premiums for poorly maintained orchards, the crew foreman and the crew committee attempt to resolve the issue. If no agreement is reached, the matter is referred to Hildalgo who makes a decision as to whether the premium will be paid. If the crew committee disagrees, further handling of the matter is pursuant to the grievance procedure set forth in the collective bargaining agreement between CGA and the UFW. While on some occasions a grower may be given an explanation for the need to pay a premium, he has no part in determining whether it will be paid. There have been occasions when Hildalgo agreed that a crew was entitled to a premium despite the grower's protests .

Coastal's dispatcher makes the crew assignments of individual workers. The tendency is to assign a worker to the same crew year after year. A crew generally picks for growers shipping to one shed, however, there are occasions when it picks orchards -shipping to other sheds. The individual grower, rather than Coastal, selects the shed used for packing and marketing its fruit.

The field superintendents for the houses packing the member's fruit meet each morning with Coastal's operations manager and dispatcher to determine which orchards will be harvested that day. The picking

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7/A set is a group of eight trees.

8/Coastal foremen do not have authority to effectively recommend discharge. Their recommendations are independently investigated before a discharge is effected.

schedule for the growers shipping to a particular packing house is established by the field superientendent. He cruises the orchards to ascertain their readiness and contacts the grower's ranch foreman to ascertain whether there are any plans for irrigating or spraying the orchard The picking schedule is designed to provide the packing shed with the flow of fruit needed to meet the shed's marketing requirements. The grower has no control over when his orchard is harvested. He does receive notice it is to be picked from the field superintendent. He receives no such notice from Coastal.

Coastal's by-laws do not require its members to have their orchards harvested by Coastal but rarely does a member not use CGA. The main reason members do not use Coastal employees is an inability to have their trees harvested at a specifically desired time, so they turn elsewhere for a labor force and use Coastal employees as insurance.

Whenever a grower uses his own crew to harvest an orchard covered by his Coastal membership, Coastal supplies the workers with the same equipment needed for harvesting, i.e., ladders, rings, clippers, picking bag, safety helmet, leather gloves and canvas sleeves, that it supplies its own employees. A grower pays his share of Coastal's overhead irrespective of whether CGA does his harvesting; the pickers' equipment is part of that overhead cost for which he is paying; thus, Coastal has concluded the grower is entitled to have the equipment supplied to whatever workers pick orchards covered by his membership. Equipment is not furnished for picking any acreage not covered by the membership.

Coastal's services are available only to its members. A grower becomes a member by filing an application for specific acreage; by having his orchard inspected by Hildalgo and by subsequent acceptance of his application by the Board of Directors. When a grower transfers by sale or otherwise a piece of property covered by his membership, the membership is not transferred with the property, the new holder must make application for membership if it desires to have Coastal harvest the crop. Even when the property has previously been harvested by Coastal, it is their practice to inspect the orchard before accepting the application of the new owner. Similarly, if an existing member acquires new acreage which it desires Coastal to harvest, a new application covering that acreage is required. A member is not required to enroll newly acquired acreage with Coastal.

Lemons are harvested in Venture County on a year-round basis, and Coastal maintains a year-round work force of 60 harvest employees who normally work five days per week and 30 to 4-0 weeks per year. Peter Marulakos employed as a harvester and checker testified that inclement weather is the only reason full-time employees lose work. Marulakos has worked for Coastal for 13 years and there are 4-1 full-time employees with more seniority than he.

Beyond its year-round employees, Coastal has maintained a steady group of harvest employees. During the 1978-1979 season, except for a three-week period when it hired 30 skilled pickers during an emergency, all of its 8M-Q peak period work force were former employees of Coastal. As of the time of hearing it had 1,14-0 people on its seniority

list.

While harvesting occurs on a year-round basis, there is a peak period plateau which normally runs from about March 15 to June 15. In March, 1978, Coastal was operating 31 crews; six were working at the time of hearing. The normal crew size is 30 to 34.

An orchard is usually picked at least three times during the course of a year and probably by a different crew on each occasion although the same foreman might be used. There has been a trend to fewer pickings per year because of rising labor costs.9/

Each week Coastal totals the direct picking costs chargeable to each grower for whom it rendered services during the preceding week. Included in the total are the following items: the amount paid per day for the boxes picked, the checkers' wages, the foreman's wages and the appropriate state and federal payroll taxes. A statement covering these charges is sent to the grower's packing house. Thereafter Coastal receives a single payment from the packing house covering all growers using that house. The money is put into Coastal's payroll account to cover amounts due its employees. Coastal maintains almost no capital funds. Once a month the statement submitted to the packing shed also includes the portion of Coastal's overhead costs chargeable to the grower. Subsumed in the category of overhead are such items as administrative costs, picking equipment costs, maintenance and operation of the camp provided for workers,10/ maintenance and operation of Coastal's 33 buses, wet time costs, as well as vacation costs and other items which cannot be tied to a particular worker. It appears that the assessment of overhead costs to each grower is based upon the share of the total boxes picked during the month represented by the number of boxes picked for the grower that month. This share expressed as a percentage of the total is then applied to a total money figure which approximates Coastal's actual expenses on items covered by overhead. Members who do not utilize Coastal to pick their fruit are also charged the overhead assessment.

Having paid Coastal, the packing shed deducts the amount of those payments from monies otherwise due a grower from the sale of his fruit.

Coastal loses some of its members each year. Some acreage is sold for real estate development, trees get over age and are bulldozed under and the acreage is replanted or put into row crops.11/ a change in packing houses may also occasion a grower's withdrawal from CGA.

During the 1975-1975 season Coastal lost approximately 40

9/Credited and uncontroverted opinion of Jack Lloyd.

10/Workers living in the camp are charged $5.50 per day for room and board. Lloyd testified that the camp operates at a loss, and it is the loss which is assigned as overhead.

11/Lemon trees take four to five years to mature.

growers, involving 3,000 acres of trees because there was a. break in the market and earnings were down. Owners of marginal orchards ploughed them under.

Coastal members whose lemons were being marketed through Paramount Citrus Association withdrew from Coastal at the end of the 1977-1978 fiscal year. Fifteen growers (16 orchards) were involved. Coastal earlier lost those members shipping both oranges and lemons to Paramount. The growers who withdrew in 1978 were small acreage growers. Lloyd was of the opinion that one crew would have sufficed to harvest their fruit.

During the 1976-1977 season Paramount experienced problems with the oranges' harvested by CGA and, as a result, Paramount's general manager, Baida, recommended that the growers shift to a citrus harvesting operation known as SAMCQ.12/ This shift involved only oranges, the grower's lemons continued to be picked by Coastal until the end of the 1978 season. The shift was recommended for the following reasons: CGA was primarily a lemon harvesting operation, and the general manager felt its pickers were not interested in picking oranges. Oranges are transported to the packing house in bins, with Coastal the grower was charged a 17-box rate for a full bin while other harvest operations charged only 16 boxes to a full bin; thus harvesting by Coastal was more expensive to the grower. An additional cost factor leading to his recommendation that the growers shift to SAMCO was the travel cost charged by Coastal because the orange groves were located 20 to 30 miles away from Coastal's yard.

The following year Paramount recommended that growers shift their lemons to SAMCO as well.13/ Baida made this recommendation because it is easier to coordinate lemon and orange picking when both are done by the same harvest organization. He also concluded the Paramount growers harvested by Coastal were getting Coastal's poorer pickers because their groves were not so well maintained as those of larger growers, a condition which slows down the pickers and prevents them from earning by piece-rate an amount equal to the minimum hourly wage. When this happens, the worker is paid the minimum wage, thereby increasing the per-box direct labor cost to the harvester and ultimately to the grower.

SAMCO is a commercial operation. It does not require membership as a condition of using its service. It supplies its harvest employees with the same equipment as does CGA. It hires, fires, disciplines and assigns its own employees. Paramount supplies the bins and contracts for the hauling of fruit from the orchard to its facility. It also performs the same accounting functions for SAMCO as it performed for Coastal.

12/Services Agricolas Mexicanos, Inc.

13/A11 those who continued to grow lemons followed Paramount's advice. Colindo Corp., Ervin Rofaerson, C. C. Jones, Robomatic, Inc., and Robert Lord ceased raising lemons.

Many of Coastal's members raise crops other than lemons.14/ With regard to their vegetables Coastal members are members of Pleasant Valley Vegetable Cooperative, a packing and marketing organization which handles everything from ground preparation to marketing.

During the period between September 1 and September 15, 1979, Robert Duntley, a grower, notified Coastal that he was shifting his packing house membership from Seaboard Lemon Association to Limoniera Ranch Company, and that for this reason he would withdraw from Coastal. Limoniera is a commercial operation which harvests as well as packs lemons for the growers it serves. The UFW is the certified bargaining representative of Limoniera's agricultural workers and has a current collective bargaining contract with the company.

With the exception of Ferro Properties, none of the former Coastal members party to these proceedings have any agricultural employees. Ferro employs persons whom it classifies as pruners, mechanics, general farm hands, tractor drivers, truck drivers and irrigators. It has approximately 29 employees working in the listed classifications. There is no outstanding Agricultural Labor Relations Board certification covering these employees.

C. 5 & F Growers Association

S & F Growers is an agricultural cooperative established pursuant to the provisions of California Agricultural Code Sections 54-001, et seer. S & F has its offices in Fillmore, California. Its sole business is the harvest of lemons for members of the Association, and its services are not available to non-members.

S & F's operations are controlled by its Board of Directors which is elected at an annual membership meeting in February.15/ Day-to-day operations are under the direction of a general manager hired by and responsible to the Board.

Membership in S & F is attained by execution of a membership contract after approval of the grower's application. The grower's or chard is usually inspected by S & F's field superintendent prior to acceptance; however, such inspection is not a prerequisite to Board acceptance of an application. As with Coastal, a S & F membership re lates to a particular piece of property; thus, a single entity may have more than one membership. Effective November 1, 1978, 20 memberships held by 13 owners were revoked.

S & F does not maintain a labor camp for its employees. It transports them from three separate labor camps to the appropriate job site in buses which it leases from Saticoy Lemon Association, a packing and marketing operation. The buses are garaged on property leased from Saticoy.

14/Lloyd listed oranges, grapefruit, avacados and vegetables.

15/The membership exercises no direct control over 5 & F's operations.

S & F provides its employees with the same harvesting equipment as Coastal provides its employees.

Unlike Coastal, S & F is not a year-round operation. It is down between October 15 and December 15 of each year. During its operational season, its work force varies from three to seven crews. During the 1978-1979 season it operated seven crews from March until May. Crew sizes range from 30 to M-5.16/

A crew foreman is the direct supervisor of the harvesters. He performs essentially the same functions as CGA's crew foremen. However, unlike Coastal's foremen, he has authority to discharge a worker. He is directly responsible to Field Superintendent Aurelio Guzman who is responsible in turn to General Manager Lewis Lewin.

The foreman runs daily quality control checks on members of his crew by inspecting the bins of some crew members each day, thus working his way through the crew. If the foreman finds a poor quality pick, the worker receives a warning notice. Both the general manager and the field superintendent also make daily quality checks of the harvest.

Saticoy Lemon Association performs the packing and marketing functions for all S & F members. It is a cooperative lemon packing and marketing association having approximately 24-0 members and has been operative for approximately 15 years.17/ About 27% of the fruit it markets is supplied by S & F members. Prior to Saticoy's merger two years ago with Briggs Lemon Association, Saticoy marketed only for S & F members. At the time of the merger, Briggs utilized SAMCO. With the merger and the use thereafter of both harvest organizations, the door was opened and now Saticoy packs for growers harvested by S & F, SAMCO, 4-B and Vega.

The S & F field superintendent and the Saticoy superintendent work together to obtain a smooth flow of fruit into the packing house. When Saticoy informs S & F of the volume needed, S & F's field superintendent determines which available orchards will be picked. S & F notifies the individual grower that his orchard is to be picked and checks to see whether any cultural practice affecting the orchard will interfere with scheduled picking.

Orchards are customarily picked two or three times during a season and not by the same crew.

A grower may ask to have his orchard picked at a particular

16/The former general manager testified that with the advent of the UFW, crew sizes were limited to 30. An examination of the current collective bargaining agreement between the parties reveals no such limitation. .

17/There are currently no S & F members on the Saticoy Board of Directors. During the 1976-1977 season one 5 & F grower was on Saticoy's Board.

time, but whether or not he can be accommodated depends upon S & F's harvest schedule. Normally-a grower calls regarding harvesting of his orchard only when he feels his fruit is not being timely harvested.

At least since November, 1975, there have been approximately 15 members who harvested their own orchards with their own employees. Grower crews and S & F crews never work together in the same orchard. Customarily there is only one crew per orchard.

Luis Lewin, S & F's general manager, described its billing process as follows: each week S & F calculates the total payroll cost chargeable to a grower, adds a surcharge and forwards a statement to Saticoy which then sends S & F a check covering all statements forwarded. The surcharge covers payments which S & F is required to make into the UFW pension plan, the UFW medical plan, worker vacations, paid holidays and all overhead expenses. All members pay the same surcharge. Saticoy in turn charges the grower's ledger account for payments to S & F. The grower receives no money from the sale of his lemons until his account is clear.

Prior to February, 1977, S & F's by-laws contained a provision prohibiting it from representing its members in negotiations with a union or entering into a collective bargaining contract with a union. This provision was deleted in February, 1977.

During 1976-1977 15 members withdrew from S & F. No reason was communicated to S & F for these withdrawals.

Ten of the properties formerly harvested by S & F whose owners are party to these proceedings are managed, by Pro-Ag, Inc., an entity engaged in the business of managing properties for absentee landowners. Samuel McIntyre, a ranch manager for Pro-Ag, testified credibly regarding its operations, and the reasons for the withdrawal of former S & F growers from the association.18/

No grower managed by McIntyre has any ownership interest in Pro-Ag. McIntyre is directly responsible to Pro-Ag's president. Pro-Ag has no involvement in the harvesting or marketing of the crops on properties it manages. Its services are limited to irrigation, erosion control, pruning and spraying. The pruning and spraying functions are contracted out. Pro-Ag employs up to 24- agricultural workers who irrigate, do rodent control, some erosion control and some weed control. If more workers are needed, Pro-Ag gets them from an unidentified outside source. In some instances Pro-Ag merely serves as a consultant to a grower.

The citrus growing industry has changed over the last 20 years with the advent of property management operations like Pro-Ag. The expertise needed to grow tree crops can now be obtained by contract. Thus, absentee owners are able to farm on their own account.

18/McIntyre also manages properties harvested by Coastal and by L & 0. There has been an Agricultural Labor Relations Board election at L & O which resulted in a UFW certification.

The properties managed by McIntyre range in size from six acres to a single block of 97 acres and customarily contain other crops as well as lemons. Most of the growers under his management do not employ any agricultural laborers, and if they did so, such employees would not work on Pro-Ag managed properties.

When McIntyre is contacted by the packing house regarding the harvest of a property, he must be sure that it is not the middle of an irrigation cycle, that the weed control operations are out of the way and that pest control operations have been completed for a sufficient period of time to permit picking.

There are four separate growing areas in Ventura County, some are separated from the others by as much as 15 miles. McIntyre tries to arrange his harvest schedule so that it is possible to keep a crew within a given area.

In 1977 McIntyre became aware from an analysis of his picking records that harvesting by S & F was more expensive than harvesting by other harvesters; so he recommended withdrawal from S & F. Most growers followed his recommendation.

McIntyre also experienced problems with S & F harvest crews breaking sprinklers and leaving harvested orchards with "messes all over the place." Visual inspections of various harvests told him that he was getting more long stems from S & F than from groves harvested either by SAMCO or 4~B Industries. On one occasion a 5 & F crew refused to harvest a hillside grove under his management. These problem.' resulted in McIntyre notifying the packing house that he wanted the properties he managed picked by 4—B whenever possible. By the start of the 1977-1978 season nine Pro-Ag managed properties shifted to 4-B. It would appear that each retained membership in S & F until November 1, 1978, the close of the 1977-1978 fiscal year.

S & F's notice to the UFW regarding withdrawals listed each, i.e., E. E. Enger, David and Laura Raphael, Hermosa Senora, John C. Lungren, Marie-Regina Coeli and Ventavo 1-4, as among the growers withdrawing effective November 1, 1978. All parties stipulated that none of the above properties was harvested by S & F after November 1, 1977; there was apparently a de facto withdrawal as of the end of the 1976-1977 year.

The current status of the 21 properties withdrawn from S & F membership November 1, 1978, is as follows: McConica Ranch 5 and Ranch 6, while separate S & F memberships, are part of a family partnership managed by John R. McConica. These properties are currently harvested by S & F. 4-B Industries harvested the first pick of the 1978-1979 season after which S & F resumed their harvesting. Since 3 & F harvests only for its members, if the McConica properties withdrew from S & F during the September 1 to September 15 escape period, they rejoined thereafter.

Ventavo Rancho Nos. 1, 2, 3 and 4 are all owned by a limited partnership whose general partner is Economic Consultants, a partnership of Daniel Lee Stephenson and Tom A. Leevers. The partnership had

S & F memberships for each of the four ranches.

S & F lists the Ventavo Ranches as withdrawing effective November 1, 1978. However, Rancho 1 was not harvested by S & F after November 1, 1976, two seasons prior to its withdrawal from membership. Rancho 2 was last harvested by S & F in February, 1977, and Ranches 3 and 4 were last harvested in March, 1977. Thus, membership was apparently retained for each of these properties for the 1977-1978 fiscal year, though S & F's services were not utilized. When Ventavo ceased using S & F, all harvesting was done by 4—B with the exception of one pick by SAMCO. The partnership has no agricultural employees. Its properties are managed by Pro-Ag.

Although listed by S & F as having withdrawn from the Association in November, 1978, E. E. Enger & Company was last harvested by S & F in September, 1977. Its crop was harvested during the 1977-1978 season by 4-B Industries. Enger's orchard is managed by Pro-Ag. It has no agricultural employees. During the 1976-1977 season, Enger used both S & F and 4~B to harvest its crop on separate occasions.

The property of David and Laura Raphael was last harvested by S & F during the 1976-1977 season, thereafter it has been harvested by 4—B. During the 1976-1977 season the property was harvested four times, twice by 4-B and twice by S & F. The Raphaels have no agricultural employees. Their property is managed by Pro-Ag. This property was among those noticed to the UFW as withdrawing from membership as of November 1, 1978.

S & F lists El Rancho de Nuestra Hermosa Senora as withdrawing effective November 1, 1978. It was last harvested by S & F employees in April, 1977, thereafter during the 1976-1977 season its crop was harvested by 4—B on two occasions and by SAMCO once. It is managed by Pro-Ag and is currently harvested by 4— B. Nuestra Hermosa has no agricultural employees.

Shortly after withdrawing from S & F in 1978, Hillary Ling re-joined the Association and is currently a member. Ling's fruit was not harvested during the hiatus in his membership.

John C. Lungren is another of the growers whose orchard is managed by Pro-Ag and another who ceased having S & F harvest its fruit prior to the start of the 1977-1978 season. During the 1976-1977 season it was twice harvested by S & F crews and twice by 4—B. It has been harvested by 4—B since August, 1977, though purportedly Lungren remained a S & F member until the start of the 1978-1979 season. Lungren has no agricultural employees.

Rancho Marie-Regina Coeli is managed by Pro-Ag. It was harvested by 4-B during the 1977-1978 season and is currently so harvested. During the 1976-1977 season its crop-.was harvested four times, twice by S & F and twice by 4—B. It has no agricultural employees. S St. F listed Regina Coeli as withdrawing its membership effective the start of the 1978-1979 season.

J & J Homze-Fairview is currently harvested by SAMCO. It has

no agricultural employees. It is represented' by the Association to have withdrawn effective November 1, 1978, despite a stipulation it was last harvested by S & F in December, 1978. The record does not explain the inconsistency between the harvest of Homze at a time when it was purportedly not an Association member and testimony that S & F picks only for its members.

At the time of hearing L & L Citrus, a former member of S & F, had executed a sales contract for its lemon properties. It was to cease operations August 1, 1979.

J.V.P. Citrus employs five agricultural employees, none of whom are used to harvest lemons. J.V.P. is a corporation. Its president is Allan M. Pinkerton who independently raises lemons and who also was a S & F member. J.V.P.'s agricultural employees do work for Pinkerton, but they are not used for harvest purposes. Both J.V.P. and Pinkerton presently use SAMCO to harvest their crops; each having withdrawn from S & F as of November, 1978.

Bob Wiker is the managing partner in, the partnership of Wiker, Marberry & Brunlcan. Wiker is also the sole proprietor of another lemon orchard. Neither operation has any agricultural employees. Wiker's property is managed by Pro-Ag. The partnership uses independent contractors to handle the various facets of its cultural needs,

Bob Wiker and Wiker, Marberry were harvested by S & F during the 1977-1978 season, and both withdrew from the Association effective November 1, 1978. Both are currently harvested by 4—B.

Ester Parker No. 1, No. 2 and No. 3 were harvested by S & F until the start of the 1978-1979 season. These properties are currently harvested by SAMCO. Parker has no agricultural employees.

Thus, of the 21 properties listed as withdrawing from S & F at the start of the 1978-1979 season, it appears that only eight used S & F employees during the preceding season. One hundred sixty acres were affected by the switch of these growers. Three properties listed as having withdrawn are still members and one is out of business. Eight of the remaining nine properties last used S & F employees no more recently than the close of the 1976-1977 season, and one last used S & F during the 1975-1976 season.

DISCUSSION AND CONCLUSIONS

We start with the proposition that the status of CGA and S & F as agricultural employers within the meaning of Labor Code Section 11443. M-(c) has been established by the Board by Board certification of the UFW as the collective bargaining representative of its employees. This proposition is unchallenged by either association or any of the individual growers party to these proceedings. The UFW's assertion that neither S & F nor Coastal is "the type of entity that can be classified as employers under the Act" will be discussed below.

In arguing that the certifications should be "clarified" to name the association and each of its individual members as the

"agricultural employer" of the group of employees who voted in the representation elections previously held, the UFW propounds the following theories:

1. The association and its individual members constitute a single employer for purposes of the Act.

2. The association and its members are joint employers of the employees who voted in the representation election among the association's employees.

3. The association and its members constitute a multiemployer bargaining unit.19/

In addition to the substantive issues involved here, the grower respondents urge the clarification sought would deprive them of-due process in that they were not noticed and given the opportunity to participate in proceedings connected with the election.

Respondents also argue that the unit sought by the UFW is inappropriate in that it does not seek to include all agricultural employees of the individual growers. Alternatively the argument is made that the inclusion of such employees by clarification of the existing certifications would deprive those employees of the right to select their own bargaining representative.20/

We turn first to the UFW's contentions.

A. The Single Employer Argument

The Board has previously announced criteria to be used in determining whether nominally independent agricultural employers should be considered as a single employer of a specified group of agricultural employees.

In Louis Pelfino Co., 3 ALRB No. 2 (1976), the Board found four jointly-owned ranches to constitute a single agricultural employer. It declined to announce any mechanical rule for such determinations and stated it would look to such factors as similarity of operations, interchange of employees, common labor relations policy, common management and common ownership to decide single employer issues.

In Abatti Farms, Inc. and Abatti Produce, Inc., 3 ALRB No. 83 (1977), the Board adopted without discussion the IHE's conclusion, and his analysis leading thereto, that Farms and Produce were a single employer. The criteria used in reaching this conclusion were the following: common ownership, common control, interrelations of operations and common control of labor relations.

19/Thus, by whatever name the UFW urges that the association and its members are co-employers of the same group of employees.

20/1 n view of the recommendation set forth below, the latter two arguments are not discussed.

Rivcom Corporation and Riverbend Farms, Inc., 5 ALRB No. 55 (1979), is the most recent case in which the Board has dealt with the issue. In finding that Rivcom and Riverbend constituted a single, integrated enterprise, the Board considered the following factors: interrelation of the operations, common management of business operations, centralized control of labor relations and common ownership, reiterating that no rule would be mechanically applied and that no single factor is determinative.21/

In Perry Farms. Inc. v. Agricultural Labor Relations Bd., 86 Cal.App.3d H48, M-65 (1978), the court found the Board's conclusion that Perry, PFI and LFLC comprised a single employer to be supported by substantial evidence. The quoted facts relied upon by the Board were the following:

> Ernest Perry owns all stock in, and is President of Perry Farms, Inc. Leonard Loduca is its Vice-President. Perry and Loduca each own 50/4 of the stock of LFLC. Again, Perry is the President and Loduca the Vice-President. Both LFLC and Perry Farms, Inc., share the same address and same telephone number. Ernest Perry makes all of the material decisions for both entities. He controls and administers, and makes the labor relations decisions and policy for both. Perry also establishes and negotiates the deals in which the two corporate entities participate. The record discloses that one or the other of these entities variously functioned under Perry's personal direction during 1975 as an owner of growing crops, as a labor contractor, and as a custom farmer and harvester, and that it was Perry who determined in which capacity they functioned.
>
> Perry Farms. Inc., supra, at p. M-65.

We turn now to an application of the recited criteria to the facts of the instant case.

1. Common Ownership.

The Board, following Department of Labor Regulations, has held that employees of a farmer's cooperative association are employed not by the coop's member farmers but by the cooperative association.22/

> Cooperative associations, whether in the corporate form or not, are distinct, separate

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21/There are a multitude of National Labor Relations Board cases dealing with the single employer issue. Triumph Curing Center, Inc., 222 NLRB 627 (1976), is illustrative of the National Labor Relations Board's approach. See also cases cited at Page 531 thereof.

22/Bonita Packing Co., Inc., M- ALRB No. 96 (1978).

entities from the farmers who own or compose them.

29 CFR 780.113 (a).

Similarly, agricultural cooperatives such as Coastal and S & F are treated under California law as distinct and separate entities governed by the same law as California corporations in general, except where there is a specific provision of the Agricultural Code to the contrary. 23/

Thus, the mere fact of grower-membership in one of the harvesting associations does not establish common ownership as between grower and association in the sense in which that term is used as a criterion to establish single or joint employer status. In Louis Pelfino, supra, common ownership was found among several ranches owned by partnerships when Louis Delfino was a 50% partner in each enterprise.24/ There is no evidence in this record that either association has any proprietary interest in any of the lands of its grower members. Common ownership is lacking between S & F and CGA and their respective grower-members. Nor are grower-members common owners of the coop's assets.25/ "

2. Common Management And Control.

No grower-member of either S & F or Coastal exercises any day-to-day control over the management of the association. The grower has no control over when his crop will be picked, he has no control over the personnel assigned to harvest his fruit, the size of the crew, the rate it is to be paid, the disciplining of the persons assigned to harvest his fruit, the hiring of persons assigned to harvest his fruit; nor is there any evidence that any grower participates in any other day-to- ; day management decisions of the association of which it is a member.26/ Nor is there the day-to-day consultation between a member and his association for the purposes of coordinating the operations which the Board found to evidence common management in Abatti Farms.27/

Thus, the conclusion follows that the UFW has failed to produce evidence from which may be drawn the conclusion of common management and control by association members over either association.

23/California Agricultural Code Section 54-040.

24/See also Abatti Farms, Inc., supra, wherein Ben and Tony Abatti were the only two stockholders in the two corporations, Farms and Produce, each owning 50% of the shares of each corporation.

25/Bonita Packing Co., Inc., supra; California Agricultural Code Section 54040.

26/See Rivcom Corporation and Riverbend Farms. Inc., supra.

27/Abatti Farms, Inc. and Abatti Produce, Inc., supra.

3. Common Control Over Labor Relations.

It is apparent from the record that none of the growers involved herein exercises any control over the relationship between its association and the employees of that association. Each association has a collective bargaining agreement with the UFW which was entered into by it without consultation with or ratification by the members of the association. Grower-members have no input with respect to the resolution of any grievance arising thereunder; such grievances are resolved between association and union representatives, irrespective of the wishes of a grower.

In Rivcom, the Board noted that the absence of a common labor relations policy does not preclude finding single employer status.

> This is especially true in cases arising under the ALRA. Labor contractors who supply agricultural labor may exert a substantial amount of direct control over the wages and working conditions of the employees, arid yet are excluded from the statutory definition of an agricultural employer. . . . The result is that in agriculture the statutory employer may not exercise direct control over wages and working conditions of the employees. In view of the unique role of the farm labor contractor in agricultural employment, less weight is accorded the factor of direct control over labor relations than in the industrial setting.
>
> 5 ALRB No. 55, at p. 7.

The reason for the rule enunciated in Rivcom is not present herein. There, if the absence of labor relations control by the agricultural employer had been given significant weight, the persons employed by the labor contractor would have been excluded from coverage under the Act. Such is not the case here. The affected employees are already covered by a collective bargaining agreement in a certified bargaining unit. Appropriately, more significance may be given to the absence of any direct grower control over the labor relations or working conditions of the affected employees in determining whether the grower is a co-employer.28/

4. Employee Interchange.

While most growers do not have any agricultural employees, where there are such employees, the record shows them to be totally independent of any control by Coastal or S & F. In the rare instances

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28/The term co-employer is used to encompass the terms "single employer," "joint employer" and "multiemployer." Single employer and joint employer while analytically discrete concepts are sometimes confused in the cases.

where a grower-member utilizes his own crew to harvest his fruit, the association exercises no control over the conditions under which such harvesters work. The grower's crew is supervised by the grower's foreman.

There is no evidence of an interchange of employees between either association and any of its members with respect to harvest operations or other operations in which a grower may be engaged.29/

5. Interrelation Of Operations.

There is a degree of interrelation of operations between the CGA or S & F and their respective members in that the association's harvest date for a particular grower must come at a time when it does not run afoul of any cultural practice performed by the grower. Thus, it must come at a time when the orchard has not recently been sprayed or at a time which is consistent with the grower's irrigation schedule. However, beyond these limitations there is no interrelationship. The primary interaction is between the association and the packing house. Harvesting is coordinated with the demand needs of the packing house to maintain an optimum flow of fruit through the shed. As noted above, the grower is not involved in this interaction.

There is, of course, a fundamental interrelationship in the sense that if the grower did not grow lemons, the association would have none to harvest; however, this relationship is not distinguishable from any relationship between a provider of services and its customers. There is not the kind of interaction which is significant for purposes of holding a grower to be grouped with the association as a single employer because it bears no direct connection to the circumstances under which the employees of the association will perform their work. We do not have a situation in which it can be said that there is such a significant degree of vertical integration between the activities of a grower and the harvest association as to compel a finding of single employer status absent any of the other criteria required by the Board. To find single employer status on the basis of this criterion would be contrary to the Board's rule in Rivcom.

Finally, it should be noted that unlike the standard brand situation in which a party seeks application of the single employer doctrine, i.e., one in which nominally separate employers are treated as one for the purpose of incorporating their separate work forces within a single bargaining unit, the Petitioner here does not seek by its argument of single employer to bring additional employees within the scope of the certification.

To summarize: Precedent with respect to the question of whether nominally separate agricultural employers constitute a single employer does not support the conclusion that the outstanding certifications should be amended or "clarified™ to list all individual grower-members of the respective associations as the employers of the employees

29/See Louis Pelfino Co., supra, in which the presence of such interchange was a factor considered by the Board in finding four partnerships to be a single employer.

covered by the certification. B.

The Joint Employer Argument

Having found that Board cases dealing with the single employer issue do not support the result sought by the UFW, we turn now to an analysis of the authority it cites for the proposition that "(t)he associations alone should not be considered employers under law. "30/ Joe Maggio. Inc., 5 ALRB No. 26 (1979); Mel Finerman/Circle Two, 5 ALRB No. 28 (1979); and Napa Vallev Vineyards Co., 3 ALRB No. 22 (1977).

In Joe Maggio the Board was presented with the question of whether carrot harvest employees nominally employed by a custom harvester were, for purposes of the Act, employees of the grower (Joe Maggio) and properly included within a certification covering all Maggio's employees. The case came before the Board on the UFW's petition for clarification seeking to determine whether the harvest employees should be so included. The thrust of the petition was to include additional employees within the scope of the Maggio certification, i.e., to determine whether Maggio or the custom harvester was the employer of harvest employees.

The UFW contended that Maggio was the employer of the carrot harvest employees "... because of the control it exerts over the harvesting operation and the long-standing employment relationship between Maggio and the individuals in the topped-carrot harvest crew." The Board adopted the UFW's argument, resting its conclusion upon the following facts:

> Maggio sets the irrigation and picking schedules, deciding when and where picking will occur and the amount of daily tonnage to be picked. Taylor/Williams (custom harvester) picks the carrots but does nothing more.
>
> Maggie's long-standing employment relationship with the topped-carrot harvest workers is also an important factor in this case. These employees were hired almost exclusively from Maggio carrot or broccoli crews and do not follow Taylor/Williams from farm to farm unlike the situation of custom harvesters, who generally have their own employees working with them at more than one agricultural site. (Citations omitted.)
>
> The overall control that Maggio exerts and the long-standing employment relationship that Maggio has with these workers persuades us that Maggio is best able to provide the most logical and stable

30/ It should be noted, in passing, that no one makes such a contention; rather the question is whether the associations alone should be considered as the employers of the employees covered by the certifications the UFW seeks to clarify. Certainly the growers are agricultural employers as defined in Section 1140.4(c).

bargaining relationship which bests serves the purposes of the Act.

5 ALRB No. 26, pp. 6, 7.

Bypassing the policy and analytical differences between a situation in which the union seeks to provide additional employees with the protections of an established bargaining relationship and a situation in which the union seeks to prohibit an employer from ceasing to be a customer of an agricultural employer with the object, hopefully, of ever avoiding any reduction in size of the work force as of the time of certification, it is apparent that the rationale, of Joe Maggio if appropriately applied to the fact situation herein would not lead to the result sought by the UFW.33/

The record is devoid of evidence of a long term or, in fact, any employment relationship between any individual grower subject to these proceedings and any employee of either association. Unlike Joe Maggio the persons harvesting a grower's fruit do not come from other of his agricultural operations and do not return to such operations following his harvest, rather they move on to harvest another grower's crop.

Here, an employee's stability of employment attaches to the harvest association by which he is employed rather than to a particular grower. CGA has been in operation for some 19 years and has approximately 4-0 employees with more than 13 years' seniority. S & F has been operating for at least 15 years. Thus, the relationship between CGA or S & F and their employees is long-standing and comparable to the relationship between Maggio and the harvest employees there found significant by the Board. There is even less relationship between a grower and the harvest employees here than existed between Taylor/Williams and the harvest employees in Maggio.

The present record does not establish the degree of grower control over the harvest found in Joe Maggio and relied upon in holding Maggio to be the agricultural employer. Here, the grower does not set the daily tonnage to be picked, it does not control the day on which the orchard is to be harvested, it does not own the bins into which the harvested lemons are deposited, it does not transport the lemons to the packing shed with its own employees, it does not utilize its own employees in connection with the harvest, and for the most part does not employ any agricultural employees for other purposes. Unlike Maggio, none of the grower-parties herein has a history of harvesting its lemons with its own crew, and there is no evidence that upon withdrawal from Coastal or S & F it harvested its own crop, rather each moved to another custom harvester. In sum, Maggio provides no support for the

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31/ One can theorize that the rigidity which the UFW seeks to impose upon the associations and its members would be self-defeating unless member-growers are to be prohibited from withdrawing from the association when they cease to be lemon growers as well as when they shift to another custom harvester. One cannot foresee a grower willingly joining a harvest association from which it was free to withdraw only in the event of a decertification.

position urged by the UFW.

Mel Finerman Co./Circle Two, 5 ALRB No. 28 (1979), cited by the UFW, is a case in which the Board found Circle Two not to be an agricultural employer within the meaning of the Act and held its employees to be agricultural employees of Finerman and included within the certification covering all agricultural employees of Mel Finerman, Inc.

The holding rests upon the following conclusion:

> Although Circle Two may exercise somewhat more authority than a typical labor contractor in its harvesting of crops owned by Finerman, we find that Finerman retained a more substantial and permanent interest in the ongoing operation.
>
> 5 ALRB No. 28, p. 3.

Cited as "significant" factors considered in reaching this conclusion were the following: Circle Two's principals were former Finerman employees whose duties had not significantly changed; substantially more than 9Q% of Circle Two's work was performed for Finerman; all major equipment was supplied by Finerman; and Circle Two's potential profits and losses are greatly affected and limited by Finerman's control of the entire agricultural operation.

The factors relied upon by the Board in Finerman are not present here. While the S & F and Coastal Boards of Directors are elected by the association's membership, their duties as directors are distinguishable from their grower duties; moreover, the directors exercise no day-to-day control over the harvesting operations of either association. There is rib evidence that any management person employed by either association had previous employment with any grower-member.

The associations or the packing houses, rather than the growers, supply the equipment necessary for the harvest and transport of the fruit. No significant percentage of the work performed by Coastal or S & F is performed for a single grower and no work at all is performed for some members.32/

Napa Valley Vineyards Co., 3 ALRB No. 22 (1977), is not apposite because the Board there was faced with the question of whether

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32/If one were to consider all Coastal members as a single entity, one could argue that each worked solely for a single entity. However, there is no evidence to support a conclusion that individual growers should be lumped together as a single employer. The only thing the individual growers have in common is that they grow lemons and belong to either S & F or CGA, a prerequisite for being able to obtain the services of that association. If either association were a commercial operation, such as SAMCO, the precondition would not be present. Certainly the form of organization, i.e., coop versus general corporation, cannot be controlling.

there were circumstances in which a licensed labor contractor can be an agricultural employer. The Board following the reasoning and guidelines of the Fair Labor Standards Act as embodied in 29 CFR Section 780.330 and Section 780.331 found that Napa Valley qualified as an agricultural employer under Labor Code Section 1140.4(c). Here, there is no contention that grower-members of either Coastal or S & F are not agricultural employers; rather the issue is whether the grower-members are employers of the CGA and S & F employees harvesting their lemons. Nor do Respondents contend that Coastal and S & F do not qualify as agricultural employers under Section 1140.4(c).33/

Having argued that both Coastal and S & F are more than labor contractors and detailing evidence in support of this proposition, the Union then asserts that "S & F and CGA are still not the type of entity that can be classified as employer (sic) under the Act." 34/ In the face of its certification by the Board with respect to the employees of each of the associations, this argument is startling. It is stated in the following terms:

> Unlike the entities in Kotchevar, supra, Napa; Valley, supra, and Gourmet Harvesting and Packing, supra, S & F and Coastal Growers have no investments in land or crops, no major investments in equipment, no responsibility for hauling the fruit, no real discretion with regard to when and where to harvest. They are totally dependent upon their grower members and the arrangements made by the packinghouses for the harvest: their entire raison d'etre (sic") is to service their members not to make a profit. But most significantly, the associations cannot independently provide stable long-term employment to lemon harvesters. As has been conclusively shown the associations are totally dependent on their members for providing employment to the harvesters.
>
> Petitioner's Post-Hearing Brief, pp. 45-46.35/

The simplest answer to this contention is that a harvesting association is statutorily defined as an agricultural employer. 36/ It is apparent but for the withdrawal of certain members of each association for reasons, so far' as this record shows, unrelated to the advent o: the UFW, the UFW would not be urging that an association with whom it

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33/The labor contractor versus custom harvester issue was also involved in Kotchevar Brothers, 2 ALRB No. M-5 (1976).

34/Petitioner's Post-Hearing Brief, at p. 45.

35/References to Kotchevar and Napa Valley are to cases discussed herein. Gourmet Harvesting and Packing is found at 4 ALRB No. 14 (1978), and involved the question of whether Gourmet though a labor contractor was an agricultural employer.

36/Labor Code Section 1140.4(c).

has a collective bargaining agreement is improperly certified as an employer under the Act.

With regard to the UFW's assertion that the associations cannot provide stable long-term employment, to lemon harvesters, suffice it to say the assertion finds no support in the record. The evidence is to the contrary. Finally, with respect to the assertion that S & F and CGA are totally dependent upon their members in order to provide work for lemon harvesters; like any service business, CGA and S & F are dependent upon their customers as a source of revenue to enable them to continue in operation and to continue to have a work force to serve those customers. In this regard while structurally different from lemon harvesting operations which are not cooperatives, analytically there is no difference in the role played in the lemon citrus industry between the coop harvester and the commercial harvester.

Thus, the UFW's contention that neither S & F nor CGA is the type of entity that can be classified as an employer under the Act must be rejected. Application of the rationale of Maggio and Napa Vallev to the facts herein, whether those cases be viewed as joint employer cases or primary employer cases, does not lead to the conclusion that either S & F or CGA should be coupled with its respective members as the Section 1140.4(c) employers,

C. The Multiemplover Contention

The Board's initial decision, Eugene Acosta. et al, 1 ALRB No. 1 (1975), established the appropriateness of multiemployer units under the Agricultural Labor Relations Act. Citing National Labor Relations Board precedent the Board noted:

> (T)he NLRB does not lightly nor automatically impose a multi-employer bargaining unit over the objection of a party. It considers a single-employer unit presumptively appropriate, and, unless the employers are closely related in ownership and control, it recognizes a multi-employer unit only upon a history of collective bargaining on a multi-employer basis which it determines to be "controlling." (Citations omitted.)37/

There is no prior history of collective bargaining in the present cases. Nor as noted above, do the facts herein reveal the degree of interrelationship in terms of ownership and control as to constitute the grower-members and the association a single employer within .the meaning, of the Act. Nor is there any evidence of employee interchange.38/ It may also be noted that conceptually a multiemployer unit does not fit the facts herein in that we are not dealing with separate employers with discrete work forces molded together for purposes of collective bargaining.

37/Eugene Acosta. et al, supra, at p. 9

38/Ibid., p. 13, fn. 8.

Finally, applicable National Labor Relations Board precedent holds that the establishment of multiemployer units is consensual. "The Board (NLRB) will not sanction the creation of such a unit over the objection of any party, union or employer.39/ There is an absence of such consent in the present cases.

To summarize the evidence offered by the UFW fails to establish either association and its grower-members to be a single employer, joint employer or multiemployer unit appropriate for purposes of collective bargaining, and therefore it is recommended that the petition in each of the- cases be dismissed.

D. Denial Of Due Process

We turn now to Respondent growers' contention that they will have been denied due process if the certifications are modified to name them as employers. The argument is grounded in the fact that no grower was noticed with respect to the election proceeding involving either association. Reliance is placed on Alaska Roughnecks and Drillers Association v. N.L.R.B., 555 F.2d 732 (9th Cir. 1977), cert. denied, 43M-U.S. 1069.

The operative facts in Alaska Roughnecks are the following:

Mobil operated an offshore drilling platform near Anchorage, Alaska. It contracted with Santa Fe Drilling Company to perform its drilling operations. In consideration for Santa Fe's services Mobil made Santa Fe whole for its wage and fringe benefit outlay and other expenses and paid Santa Fe a fixed percentage of costs as a profit. The contract was terminable on 30 days' notice.

The union organized Santa Fe’s employees and ultimately filed a representation petition naming Santa Fe as the employer. At the representation hearing the union stipulated that Santa Fe was the employer, and the Regional Director so found. There was no claim that Mobil was either the employer or a joint employer with Santa Fs.

Subsequent to the certification the union and Santa Fe commenced bargaining. In anticipation that bargaining would result in higher wages for unit employees, Santa Fe notified Mobil that it would seek an increase in the wages and fringes set out in their contract should bargaining result in a wage increase for unit employees.

Mobil decided to seek new bids for its drilling operations and thereafter awarded the job to another drilling contractor who submitted a lower bid. Mobil then terminated its contract with Santa Fe. When Santa Fe received Mobil's termination notice, it contacted the union and offered to bargain about the effects of the termination. At this point, the union for the first time demanded that Mobil bargain, contending it was a successor employer. Mobil refused. The union filed charges based upon the successor employer theory. The Regional

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39/Morris, The Developing Labor Law, p. 239 (1971), and cases cited therein at fn. 135.

Director declined to issue complaint; an appeal was taken to the General Counsel who reversed the Regional Director and issued complaint, alleging that Mobil was a joint employer. The National Labor Relations Board after trial so concluded.

There was no contention that Mobil was guilty of anti-union bias in terminating its contract with Santa Fe.

The question on appeal was phrased by the court as follows:

> The appeal presents the question whether Mobil could refuse to bargain with the union when it was neither afforded an opportunity to participate in the certification proceedings nor requested by the union to bargain until after Mobil terminated its contract with Santa Fe. As we shall see, our answer is that Mobil acted lawfully.
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> 555 F.2d 732, at p. 735.

The bases for the court's decision were two "closely related aspects of due process": (1) the requirement of notice and the opportunity to be heard; and (2) the National Labor Relations Board's failure to follow its promulgated rules and guidelines.

The court noted that the first indication Mobil had that anyone regarded it as an employer was when it was asked to bargain and that the first notice it had that it was considered a joint, as opposed to a successor, employer was when complaint issued. "Because Mobil had already terminated its contract with Santa Fe, the notice was clearly untimely."40/ Further, the court stated that Mobil had no duty under the National Labor Relations Act to anticipate a duty to bargain, citing N.L.R.B. v. Columbian Co., 306 U.S. 292, 297, 59 S.Ct. 501, 504, 83 L.Ed. 660 (1939).

In speaking of the National Labor Relations Board's failure to follow its regulations, the court stated that while Mobil may have been aware of the union's activities prior to notice, it was also aware of the National Labor Relations Board's representation proceedings in which it had not been asked to participate as well as National Labor Relations Board regulations requiring that a petition for certification shall contain the employer's name and that the employer shall be notified of the hearing.

> Because Mobil was neither named as an employer nor given an opportunity to object as permitted by 29 C.F.R. §102.63, it was entitled to rely on the certification result that Santa Fe was the employer, not Santa Fe and Mobil.
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> As we have noted, failure to follow promulgated rules tends to deny adequate notice. (Citation omitted.) Relying on regulations which do provide

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40/Supra, at p. 735.

> for adequate notice, Mobil terminated its Santa Fe contract before having either notice of its alleged status as employer, or any duty to bargain. Relying on those regulations, we hold that the notice received was inadequate.
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> 555 F.2d 732, at p. 736.

Like the National Labor Relations Board, the Agricultural Labor Relations Board has promulgated regulations with respect to the filing of petitions for certification. The petition must set forth the name, location and mailing address of the employer.41/ In purported compliance with this regulation, the petition in 78-RC-2-V (78-UC-l-OX) named Coastal Growers Association as the employer, and the petition in 77-RC-3-V (79-UC-l-OX) named S & F Growers as the employer. The Board's regulations state that the petition "shall be served upon the employer" and that such service may be accomplished "by service upon any owner, officer or director of the employer, or by leaving a copy at the office of the employer with a person apparently in charge ... or by personal service upon a supervisor of employees covered by the petition. . . ."42/

The UFW's compliance with these regulations could, in no way, have alerted a grower-member of either association that it was involved in the Board's representation process, or that the UFW would argue somewhere down the road that the grower as well as its harvest association was the covered employer. Like Mobil, grower-members of Coastal or S & F may have been aware of an impending representation proceeding involving its association, but like Mobil each must also have been aware of Sections 20305 (a) (2) and 20300 (f) mandating the Union to name and serve the employer in such a proceeding and was entitled to rely upon the absence of designation and service as evidence it was not involved.

The individual grower parties to these proceedings are in a position analogous to that of Mobil in that there is no longer any relationship between their former association and the grower, just as there was no longer extant when Section 8 (a) (5) charges were filed against Mobil the contractual relationship between Mobil and Santa Fe which was the basis for contending that Mobil had refused to bargain. Here, at the time the instant proceedings commenced with the filing of a unit clarification petition, the growers were no longer association members, each grower had terminated its membership contract. None of the growers served in the present proceeding was served at a time when its current status was such that the elements urged as indicia of a co-employer status existed.

As was the case in Alaska Roughnecks , the notice here served upon the grower-parties was untimely because each had already terminated its membership contract with its association. To paraphrase Alaska Roughnecks, because the individual growers were neither named as

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41/8 California Administrative Code Section 20305(a)(2).

42/8 California Administrative Code Section 20300 (f).

employers nor given the opportunity to participate in election or post-election proceedings provided for by Section 1156.3 (a), each was entitled to rely on the Board's certification that its association was the sole employer.

Consistent with the position articulated by the Supreme Court,43/ there can be no breach of any statutory duty by the withdrawing growers when their withdrawal was consistent with their membership contract, anticipated under the collective bargaining agreement between their association and the UFW,44/ and prior to any indication from the UFW that they were regarded as co-employers.

The UFW's attempt to distinguish Alaska Roughnecks on the ground that it was an unfair labor practice case rather than a representation case is unpersuasive. The Board has previously stated that representation questions cannot be retried in unfair labor practice proceedings.45/ Were it to be determined here that the growers who have withdrawn from their association are co-employers of the association's employees, the effect of such a determination upon the grower would be the same, so far as the Board is concerned, as if the conclusion were reached as the result of unfair labor practice proceedings.

To summarize: an alternative basis for dismissing the UFW petitions in each of the cases at issue is the absence of procedural due 'process accorded the individual growers who are party to these proceedings and upon whom service was effected in connection with the instant proceedings.46/

RECOMMENDATIONS

Having found that the UFW has failed to establish by substantial evidence on the record as a whole that the individual growers party to these proceedings are co-employers of the employees of the association of which they are former members, it is recommended that the petition in Case Nos. 78-UC-l-OX and 79-UC-l-OX be dismissed.47/

43/N.L.R.B. v. Columbian Co., supra.

44/The UFW's collective bargaining contracts with both CGA and S & F evidence an understanding that members may withdraw from the association. The "Worker Security" section of each contract requires that the UFW be notified of withdrawals as soon as possible."

45/D'Arrigo Bros, of Calif., M- ALRB No. 45 (1978); George Araklian Farms. Inc., 4 ALRB No. 53

46/At the outset of the hearing, an order issued finding service upon the association of the petition to clarify bargaining unit not to be valid service of the petition upon current members of that association. I am unaware whether any action has been taken with respect to that order.

47/I. e., single, joint or multi-employer.

Having found that said growers were not accorded due process and were entitled to rely upon the representation proceeding as having established CGA and S & F as the sole employers of the unit employees and having found such denial of due process to be an independent basis for dismissing both petitions, it is recommended that the Board dismiss each Petition to Clarify Bargaining Unit on said grounds.

Dated: April 18, 1980

AGRICULTURAL LABOR RELATIONS BOARD

By 

Robert LeProhn
Administrative Law Officer